

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

TYSON EUGENE MARSHEK,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 05-3158-CV-S-FJG-H
JOSEPH GUNJA, Warden, ¹)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to challenge actions of the Bureau of Prisons ["BOP"] regarding the calculation of his good conduct time credit.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that petitioner's claim is without merit. Petitioner has no substantive due process right to good

¹The name of the current warden at the Medical Center, Joseph E. Gunja, has been substituted for that of the former warden.

conduct time credit, which is awarded based on exemplary conduct and for which the calculation is at the discretion of the BOP. The record in this case supports the Magistrate's conclusion that the BOP properly exercised its discretion in finding that petitioner was not entitled to the full 54 days of good conduct time and only awarding him 42 days for the time period in question.

Accordingly, based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

Date: December 14, 2006
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge